STATE OF MICHIGAN

COURT OF APPEALS

THOMAS M. CLINE, BRAD DEORNELLAS, AND DAVID S. DELEZENNE,

Plaintiffs-Appellants,

v

MICHIGAN DEPARTMENT OF CORRECTIONS, ANN GREEN, RAJABU NAKENGE AND JIMMY STEGALL,

Defendants-Appellees.

UNPUBLISHED
April 24, 2003

No. 234714
Macomb Circuit Court
LC No. 00-01377-CL

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Plaintiffs appeal as of right from the trial court's granting of summary disposition to defendants in this employment discrimination case. We affirm.

I. Material Facts and Proceedings

As a general overview, each of the plaintiffs are current or former Caucasian correction officers who claim that their African-American supervisors discriminated and harassed them because of their race. Only plaintiff Delezenne has been terminated from his employment; plaintiffs Cline and Deornellas remain employed by the Department of Corrections (Department). Additionally, as plaintiffs recognize in their brief on appeal, this is not a case involving the use of racial slurs toward the plaintiffs in the workplace. Instead, the harassment which they claim to have suffered from has a racial overtone (at least as plaintiffs claim), simply because their supervisors are African-American and they are Caucasian.

A. Plaintiff Thomas Cline

Plaintiff Cline has been employed as a corrections officer with the Department since June 2, 1996. Between June 18 and July 30, 1999, Cline filed three separate complaints which he claims were complaints of "race harassment." Specifically, on June 13, 1999, Cline filed a union grievance alleging that Sergeant Toya Williams, an African-American female, denied him overtime on June 13, 1999 in violation of the collective bargaining agreement between the Michigan Corrections Organization (MCO) and the Department. In that grievance Cline asserted that he should have been offered overtime before "B-list" employees. In this union grievance

there is no allegation that Cline was passed over for this overtime opportunity because of his race.

Soon thereafter, on June 29, 1999, Cline filed an internal Department complaint. The complaint was filed against Sgt. Williams and on the form Cline indicated that he felt that he had suffered "race" and "gender" discrimination/harassment as he checked off those boxes on the form. However, as to the substance of the complaint, Cline stated that he believed that he was subjected to harassment "due to the fact that Sgt. T. Williams knew I was about to write a grievance on her for passing over myself on the overtime available for the 10-6 shift on 6-14-99, where she scheduled B-list personnel first." Cline also indicated that on June 16, 1999, Sgt. Williams asked him to step into the deputy's conference room and, once he did, she said to him "so you think you're a big tough guy, right" and "you think you are a big puff daddy." Cline admitted, however, that Sgt. Williams never utilized racially derogatory names or comments to him during any of these exchanges.

The Department investigated the overtime issue on July 13, 1999, and determined that Officer Cline had been inadvertently passed over for overtime and that it had occurred because there were several supervisors in charge of filling the particular schedule and an oversight simply occurred. The Department indicated that "in the future, all efforts will be made to reverify that A-list officers have been properly polled to establish that no mistakes were made."

Around the same time, and in particular on July 16, 1999, Cline filed another internal complaint against two of his supervisors, this time against defendant Sergeant Nakenge and a Captain Warren, who was the shift commander. Sgt. Nakenge is an African-American. Cline checked off on the form that he felt he was subject to "race" and "gender" discrimination. Specifically, the complaint form indicates that Cline was complaining of two separate incidents taking place on July 12, 1999. With respect to Sgt. Nakenge, Cline alleged that Sgt. Nakenge approached him regarding a disagreement Cline had with corrections officer Holly, an African-American female. The disagreement was over where inmates could be allowed to go to drink water, with Holly's opinion differing from that of Cline's. According to Cline's complaint, the following exchange took place between he and Sgt. Nakenge:

> He [Nakenge] then said "listen to this, this is the way it is going to work" when you come into these units. From now on you are going to do what the regulars say or do. I then said "well, they don't do their jobs so I guess I don't have to do my job anymore, right." Sgt. Nakenge then said "listen and don't say another word." You have "no common sense" and the next time you are in this unit, you will do what the regulars tell you "or else." If you want to change the rules you need to become a supervisor "you got that." He then said that this came from Captain Warren.

According to the complaint, Cline then left the housing unit and went to control central to speak to Captain Warren, the shift commander. According to Cline, what transpired next is as follows:

> I told him (Captain Warren) I got his message and asked him if he wanted me to quit doing my job. He said "I want you to work with these officers and do as they do in the units." I then replied "these officers are all lazy and don't do their jobs." Is that what you want me to do? He said "you need to go into these units and

> work and talk to these officers and if there are little rules they let slid [sic] then you should do the same, you are only there for a couple of hours. I then said that means breaking policy and not doing my job. I then told him when I am in these units I run the unit, not inmates or Friendly officers. He then repeated about letting rules slide when working with other officers in the units and doing as they do.

Cline went on to indicate that Sgt. Nakenge and Cpt. Warren did not like the way he operated and that they disliked him and considered him trouble. Cline concluded by asserting that "this harassment is a direct retaliation against me for filing paperwork and grievances against the supervisors." Again, however, Cline admitted that neither Sgt. Nakenge nor Captain Warren ever said anything to him in a racially derogatory manner, and further that he did not allege in the substance of his complaint that he was subjected to race harassment or race discrimination. In addition, Cline testified that in his view he had never filed a claim of race discrimination, race harassment, or retaliation during his employment with the Department.

Cline also filed a complaint on July 30, 1999 wherein he alleged that on July 22, 1999, he and Sgt. Nakenge were waiting for a gate to open when Nakenge turned to him and called him a "bitch." Again, Cline believes that he was called this by Sgt. Nakenge because of the paperwork and grievances filed by Cline within the preceding weeks and that Nakenge's "tone of voice was belittling and condescending. I also felt threatened by these remarks and feared for my safety while working with the supervisor." As a result of Cline's assertion that he did not feel safe working with Sgt. Nakenge, Cline was moved to the dayshift on July 23, 1999 where he no longer worked under Sgt. Nakenge. This transfer was temporary pending the results of the investigation regarding the complaints and grievances Cline had against Sgt. Nakenge.

B. Plaintiff Brad Deornellas

Plaintiff Deornellas has been employed as a corrections officer with the Department since 1994. On November 4th, 1998, he filed an internal complaint against Sgt. Nakenge and Sgt. Brown, both of whom are African-Americans. Plaintiff Deornellas checked off on the form that he felt that he was subjected to race, gender and age discrimination and in his attachments to the complaint, plaintiff Deornellas sets forth incidents that he had both with Sgt. Brown and Sgt. Nakenge. As was the case with plaintiff Cline, Deornellas' complaints against Sgt. Brown and Sgt. Nakenge reveal a difference in opinion as to how things should operate and the perception that he is being mistreated by the sergeants. There is, however, no evidence of any discriminatory statements or differential treatment. Indeed, both plaintiff Deornellas' typewritten document dated November 6, 1998 regarding Sgt. Brown and his October 26, 1998 typewritten document regarding Sgt. Nakenge contained evidence that Deornellas did not appreciate and had conflicts with these two sergeants, but contained no evidence indicating that what transpired was a result of his race.

Plaintiff Deornellas also asserts that all of the yard officers are Caucasian while both Sgts. Nakenge and Brown are African-American. Plaintiff Deornellas obtained written statements from other Caucasian yard workers (all corrections officers) who indicated that Sgts. Brown and Nakenge were disrespectful in their treatment towards the yard workers. However, like the written statements from plaintiffs Cline and Deornellas, none of these written documents contain any evidence that anything was done because of race. Rather, they show verbal

exchanges between employees and their supervisors that resulted from animosity, personality conflicts, disagreements over management issues, and the like.

The union went forward on plaintiff Deornellas' complaint and requested an investigation, which was performed by Inspector Wanda Moore. After reviewing the documentation submitted, Inspector Moore indicated to Warden Stegall (also an African-American) that the allegations of unprofessional and harassing conduct towards the officers by the sergeants were unsubstantiated. The January 21, 1999 memo from Warden Stegall to the union indicated that there were several problem areas identified by the investigation, including supervision techniques, crisis management, self-esteem/confidence building, and staffing requirements. Additionally, Warden Stegall indicated that "this administration and the management staff will continue to emphasize policy as it relates to race relations in the workplace."

In November 1998, plaintiff Deornellas was transferred from his yard position and put into a guard tower position until approximately February 2000. The gun tower position, just like the yard officer position, was not a "bid" position and corrections officers can be assigned to any non-bid position at management's discretion under the collective bargaining agreement. During this assignment to the gun tower, Deornellas received the same pay and worked the same hours as in the yard position. However, in April 2000, plaintiff Deornellas took a mental/depression disability leave.

C. Plaintiff David Delezenne

Plaintiff Delezenne indicated that he had difficulties with Sgt. Nakenge commencing in September 1995 when Sgt. Nakenge allegedly "threatened to kick my ass in the parking lot after work," bragging "that's the way I handle my business as a sergeant." Plaintiff Delezenne filed an internal complaint against Sgt. Nakenge back in November 1995 and, as a result, plaintiff Delezenne no longer worked for Sgt. Nakenge. However, on December 20, 1997, plaintiff Delezenne was again assigned to work for Sgt. Nakenge. Nine days later, on December 29, 1997, plaintiff Delezenne filed an internal complaint form, checking off the boxes indicating that he was being discriminated against and harassed on the basis of his race and color. In a December 29, 1997 typewritten attachment to the complaint form, plaintiff Delezenne recounted the events occurring two years earlier in 1995 and informed shift command of events that occurred on December 20 and 21, 1997. In particular, plaintiff Delezenne indicated that on December 20, 1997 he was having a conversation with several other officers regarding his former desire to join the armed forces when Sgt. Nakenge jumped into the conversation and allegedly stated, "there's no way I would be accepted into any armed forces because I have no self-esteem, I would never amount to shit, and I can barely do my job as C/O." The next day, according to plaintiff Delezenne, when he and Sgt. Nakenge had an argument about whose job it was to take up a ticket that had been written by plaintiff, Sgt. Nakenge ultimately stated in a loud voice, "I will not put up with this sarcastic shit from you" and "we'll take care of this in the sergeant's office." Once Sgt. Nakenge and plaintiff entered the office, Sgt. Nakenge slammed the door into plaintiff's left shoulder and said "what are you going to do about that bitch," to which plaintiff Delezenne retorted, "What is your problem? Are you trying to start a fight with me in the sergeant's office?" According to plaintiff, Sgt. Nakenge then grabbed the chair in the office and threw it across the room, ran directly toward plaintiff, and said, "yes, let's go bitch." No physical altercation took place. Importantly, after plaintiff Delezenne filed his December 29,

1997 complaint, he admits that Sgt. Nakenge and he were separated and that he only sporadically worked for him since that time.

Plaintiff Delezenne is the only one of the three plaintiffs to have been terminated from his employment. On January 25, 2000, he was terminated for repeated work rule violations and time and attendance problems that had been occurring throughout his employment. Although plaintiff Delezenne asserted that he was discriminated against because of his race, he testified in his deposition that he had no indication that Warden Stegall had denied any of his grievances because of his race. Moreover, he never told Warden Stegall that he was being subjected to racial harassment. Rather, he just told him he thought he was being harassed. In fact, plaintiff Delezenne testified that he never indicated to Warden Stegall that he thought he was being discriminated against because of his race and he never filed a complaint of harassment or discrimination against the warden during his employment.

D. The Circuit Court's Opinion

On April 26, 2001 the circuit court issued an opinion and order granting defendant's motion for summary disposition pursuant to MCR 2.116(C)(10). The trial court concluded in its written opinion that none of the plaintiffs had created a genuine issue of material fact on any of their claims, and therefore, granted the motion and dismissed the case with prejudice.

II. Analysis

A. Hostile Environment

Plaintiffs first argue that the trial court inappropriately dismissed their hostile work environment claims. We review this issue de novo, as each of the claims on appeal were dismissed through the grant of a motion for summary disposition under MCR 2.116(C)(10). *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). In *Kelly-Stehney & Assoc, Inc v MacDonald's Industrial Products Inc*, 254 Mich App 608, 611-612; 658 NW2d 494 (2003), we set forth the standard of review for our Court to apply when considering the propriety of the grant or denial of a motion for summary disposition decided under MCR 2.116(C)(10):

> A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Veenstra v Washtenaw Country Club*, 466 Mich 155, 163; 645 NW2d 643 (2002). A motion for summary disposition should be granted when, except in regard to the amount of damages, there is no genuine issue in regard to any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. MCR 2.116 (C)(10), (G)(4); *Veenstra, supra* at 164. In deciding a motion brought under this subsection, the trial court must consider affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in a light most favorable to the nonmoving party. *Veenstra, supra* at 164. The moving party has the initial burden of supporting its position with documentary evidence, but once the moving party meets its burden, the burden shifts to the nonmoving party to establish that a genuine issue of disputed fact exists. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not

> rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material facts exists." *Id.* The moving party is entitled to a judgment as a matter of law when the proffered evidence fails to establish a genuine issue regarding any material fact. *Veenstra, supra* at 164. [*Id.* at 149]

In order to establish a prima facie case of a racially hostile work environment, plaintiffs must establish (1) that they belonged to a protected group; (2) that they were subjected to communication or conduct on the basis of race; (3) they were subjected to unwelcome racial conduct or communication; (4) the unwelcome racial conduct or communication was intended to, or in fact did, substantially interfere with the employee's employment or created an intimidating, hostile or offensive work environment, and (5) respondeat superior. *Radtke v Everett*, 442 Mich 368, 382-383; 501 NW2d 155 (1993) (footnotes omitted). Additionally, as to respondent superior, an employer is not liable for a hostile work environment if it adequately investigated and took prompt remedial action once it had actual notice of the alleged hostile work environment. *Sheridan v Forest Public Schools*, 247 Mich App 611, 622; 637 NW2d 536 (2001).

The trial court dismissed each of the plaintiffs' hostile work environment claims on the basis that none of the statements or conduct at issue were on the basis of race and that the conduct otherwise did not create an intimidating, hostile, or offensive work environment. The trial court was correct in this regard.

Although the evidence revealed that each of the three plaintiffs complained of statements and conduct on the part of their supervisors, there is no evidence (a fact plaintiffs admit) that any derogatory or racially motivated statements were ever made. Stated another way, there's not a hint of evidence in the record to show that any supervisor employed by the Department utilized a racially derogatory term toward these plaintiffs or anyone else. Thus, in an attempt to inject race into their case, plaintiffs argue that because they are Caucasian, and because they were subjected to inappropriate treatment at the hands of African-American supervisors, they have established a jury question on their hostile work environment claim. However, a supervisor's different skin pigmentation alone is not sufficient to establish that inappropriate but neutral statements were made on the basis of race. *Iadimarco v Runyon*, 190 F3d 151, 156 (CA 3, 1999) ("We agree that the race of the selecting officials is not a sufficient circumstance to establish a prima facie case of discrimination by itself.").

In the absence of such evidence, plaintiffs failed to establish that they were subjected to "unwelcome racial conduct or communication" as required by *Radtke*. *Radtke*, *supra*, 442 Mich at 382-383. The evidence produced by plaintiffs established only that there were personality conflicts between plaintiffs, other corrections officers, and their supervisors. However, although there may be evidence of belligerence on the part of the supervisors, there is no evidence of racial harassment. *Morris v Oldham County Fiscal Court*, 201 F3d 784, 791 (CA 6, 2000). Anti-discrimination laws are not to be utilized as "a 'general civility code' designed to purge the workplace of all boorish or even all harassing conduct." *Berry v Delta Airlines Inc*, 260 F3d 803, 808 (CA 7, 2001), quoting *Spearman v Ford Motor Co*, 231 F3d 1080, 1084 (CA 7, 2000), citing *Oncale v Sundowner Offshore Services Inc*, 523 US 75, 81; 118 S Ct 998; 140 L Ed 2d 201 (1998).

Additionally, even if there was evidence in the record to establish that the statements and actions of the supervisory personnel were done on the basis of race, none of the plaintiffs could establish the fourth prong of *Radtke*, i.e., that the unwelcome racial conduct or communication was intended to, or in fact did, substantially interfere with the employee's employment thereby creating an intimidating, hostile, or offensive work environment. Some factors to utilize in determining whether conduct substantially interfered with the employee's employment are (1) the frequency of the conduct, (2) its severity, (3) whether it was physically threatening or a mere offensive utterance, and (4) whether it interfered with the employee's work performance. *Harris v Forklift Systems Inc*, 510 US 17, 23; 114 S Ct 367; 126 L Ed 2d 295 (1993). Being called a "bitch," being told to "prove it," or being told that one would "never amount to shit" does not create an intimidating, hostile or offensive work environment. Moreover, the alleged conduct took place over a short period of time, and comprised mostly offensive utterances. *Id.* As such, the trial court properly granted summary disposition to defendant on each of the plaintiffs' hostile work environment claims.

B. Race Discrimination

Plaintiffs next argue that their claims of race discrimination were improperly dismissed. As this issue was also resolved by defendants' motion for summary disposition under MCR 2.116(C)(10), our review is de novo. *Spiek, supra.*

In order to establish a case of race discrimination without the use of direct evidence, plaintiff must utilize the prima facie shifting burden approach set forth in *Town v Michigan Bell Telephone Co*, 455 Mich 688, 695; 568 NW2d 64 (1997). In doing so, plaintiff must establish (1) that he was a member of a protected class, (2) that he was subjected to an adverse employment action, (3) that he was qualified for the position, and (4) others, similarly situated and outside the protected class, were unaffected by the employer's adverse employment decisions. *Id*. If plaintiffs establish a prima facie case, the employer must articulate a nondiscriminatory reason for the adverse employment action. *Id.* Once the employer does so, "the presumption of discrimination created by plaintiff's prima facie case dropped away, and the burden of production returned to plaintiff to show the existence of evidence 'sufficient to permit a reasonable trier of fact to conclude that discrimination was a motivating factor for the adverse action taken by the employer toward the plaintiff.'" *Hazle v Ford Motor Co*, 464 Mich 456, 473; 628 NW2d 515 (2001), quoting *Lyle v Malady*, 458 Mich 153, 176; 579 NW2d 906 (1998).

Plaintiffs initially argue that they were subjected to an adverse employment action because of the verbal abuse, threats, and harassment they experienced and because of management's refusal to investigate the complaints. In support of this argument, plaintiffs cite *Meyer v City of Center Line*, 242 Mich App 560; 619 NW2d 182 (2000). In *Meyer* this Court held in a civil rights retaliation case that

> a supervisor's decision not to take action to stop harassment by co-workers in retaliation for an employee's opposition to a violation of the Civil Rights Act can constitute an adverse employment action. When the harassment is sufficiently severe, a supervisors failure to take action to respond can constitute a materially adverse change in the conditions of employment. *Id.* at 571.

However, plaintiffs' claims were properly dismissed because the evidence established that each of the written complaints filed by the plaintiffs were investigated by the Department. Because plaintiff Delezenne's complaint was investigated by the Department, what he is really arguing is that he was unsatisfied with the results of the investigation and, with respect to plaintiffs Cline and Deornellas, they continued to experience the allegedly hostile conduct. But being dissatisfied with the adequacy of the employer's investigation does not constitute an adverse employment action. Moreover, even if it did, for the reasons previously stated, the conduct and communication that took place within the Department was not sufficiently severe to constitute an adverse employment action. *Meyer,* therefore, offers no support for plaintiffs' position.

Plaintiff Cline also argues that he was transferred from his regular shift to a different shift, which resulted in his loss of both shift premiums and significant overtime opportunities. However, this conclusionary assertion is unsupported by the evidence. Although plaintiff Cline attached to his appeal brief a two-page handwritten document purporting to show that he missed overtime opportunities on certain days because of his shift change, there is nothing to suggest that this was done on the basis of his race. There is also no evidence that whoever received the overtime was not Caucasian. Additionally, Cline admitted that he was told he was transferred for his own protection, and that his union advised against filing a grievance because the Department was within its rights to transfer him to a different shift.

Finally, as to plaintiff Cline's assertion that his answers to interrogatory numbers thirty and thirty-one establish dissimilar treatment, in those answers he has only set forth the names of African-American male and female correctional officers who he claims were treated differently than him. However, neither answers to interrogatories thirty or thirty-one provide any factual basis establishing dissimilar treatment because of race, nor does his answer to interrogatory thirty-two. Indeed, in his answer to interrogatory thirty-two plaintiff Cline simply claims that certain African-American officers were not subjected to the same name calling, threats and ridicule and were given preferential job assignments and promotions. However, these are not the specific facts that would warrant the finding of a genuine issue of material fact when responding to a properly supported motion for summary disposition. See MCR 2.116(G)(4). See also *Jackson v Maryland,* 171 F Supp 2d 532, 541 (D Md, 2001) (failure to offer specific instances of when and how other similarly situated employees were treated precludes discrimination claims). As such, the trial court properly dismissed plaintiff Cline's discrimination claims.

Plaintiff Deornellas asserts that he was transferred from his regular assignment in the yard to the gun tower for a period exceeding six months. However, it is undisputed that Deornellas received the same rate of pay and worked the same hours as he did in his prior position, and that the Department in fact could within its discretion move correctional officers between non-bid positions such as the yard and gun tower positions. Just as importantly, there was no evidence submitted by plaintiffs to establish that the transfer was done for any discriminatory purpose or that he was treated differently than a similar situated employee when he was temporarily transferred.

Plaintiff Deornellas also argues in a conclusionary fashion that he was subjected to harassment that was so severe and pervasive that he was forced to take a medical leave. However, Deornellas has offered no law nor any substantial argument that he was subjected to a constructive discharge which, if established, could constitute an adverse employment action.

Finally, it is undisputed that plaintiff Delezenne was subjected to an adverse employment action because he was terminated from his employment in January 2000. However, the Department set forth admissible evidence establishing a legitimate, nondiscriminatory reason for his termination – poor time and attendance plus other disciplinary problems. *Town, supra.* Although plaintiff argues that Sgt. Brown had the same poor time and attendance issues, plaintiff Delezenne cannot properly compare himself to Sgt. Brown, who is a supervisor and therefore not similarly situated to plaintiff. See *Ercegovich v Goodyear Tire and Rubber Co*, 154 F3d 344, 352 (CA 6, 2000); *Mitchell v Toledo Hospital*, 964 F2d 577, 583 (CA 6, 1992); *Patterson v Avery Dennison Corp*, 281 F3d 676, 680 (CA 7, 2002).[1] As such, plaintiffs' claims of race discrimination were properly dismissed.

C. Retaliation

Plaintiffs also argue that the trial court should not have summarily dismissed their retaliation claims. We review this issue de novo. *Spiek, supra.*

In order to establish a prima facie case of retaliation under the Civil Rights Act, plaintiffs must establish (1) that they were engaged in a protected activity; (2) that defendant knew of the plaintiffs' protected activity; (3) that defendant took an adverse employment action against plaintiff; and (4) that plaintiffs' engaging in a protected activity was a significant factor in the adverse employment action. *DeFlaviis v Lord & Taylor Inc*, 223 Mich App 432, 436; 566 NW2d 661 (1997).

Assuming that plaintiffs were engaged in a protected activity, plaintiffs' claims were properly dismissed because as to plaintiffs Cline and Deornellas, they were not subjected to an adverse employment action and as to plaintiff Delezenne, he could not establish that his filing of the complaint was a significant factor in the adverse employment action. *Barrett v Kirtland Community College*, 245 Mich App 306, 315; 628 NW2d 63 (2001). For the reasons previously stated, defendant terminated Delezenne's employment because of his well documented attendance and other disciplinary problems, and there was no evidence linking his complaints to his termination. Additionally, plaintiff Delezenne's termination took place more than a year after he filed his internal complaint, which detracts from any causal relationship between the two events. Moreover, for the reasons previously stated, neither plaintiffs Cline nor Deornellas were subjected to adverse employment actions. As such, the trial court properly granted summary disposition to defendants on plaintiffs' retaliation claims.[2]

D. Intentional Infliction of Emotional Distress

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[1] Even if plaintiffs' discrimination claims were not properly dismissed on the merits, it is clear that the individual defendants would not be liable under the civil rights claims. *Jager v Nationwide Truck Brokers, Inc*, 252 Mich App 464, 478-482; 652 NW2d 503 (2002).

[2] We also point out that plaintiff Cline stated in his June 29, 1999 initial complaint that he felt Sgt. Williams was harassing him because he filed an overtime grievance against her, while in his July 16, 1999 complaint he likewise asserted the harassment was due to the union grievance, as opposed to any opposition to unlawful discrimination.

Plaintiffs also ask us to reverse the trial court's grant of summary disposition to defendants on plaintiffs' claims for intentional infliction of emotional distress. We review this issue de novo. *Spiek, supra.* In *Mino v Clio School District,* 255 Mich App 60; ___ NW2d ___ (2003), we recently set forth the proofs plaintiffs must bring forward to establish a claim of intentional infliction of emotional distress:

> In order to establish a valid claim of intentional infliction of emotional distress, a plaintiff must show: "(1) extreme and outrageous conduct, (2) intent or recklessness, (3) causation, and (4) severe emotional distress." *Graham v Ford,* 237 Mich App 670, 674; 604 NW2d 713 (1999). The *Graham* Court further stated:
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> > Liability. . . has been found only where the conduct complained of has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious and utterly intolerable in a civilized community. . . It is not enough that the defendant has acted with an intent that is tortuous or even criminal, . . . or even that his conduct has been characterized by "malice," or a degree of aggravation that would entitle the plaintiff to punitive damages for another tort. . . The test is whether . . . an average member of the community would . . . claim, "Outrageous!" [*Id.* at 674-675 (citations and quotations omitted).] [*Mino, supra* at 79-80.]

Additionally, "liability clearly does not extend to mere insults, indignities, threats, annoyances, petty oppressions or other trivialities." *Id.* See also *Margita v Diamond Mortgage Corp,* 159 Mich App 181, 188; 406 NW2d 268 (1987). Whether the facts arise to extreme and outrageous conduct is a question of law for the court to decide. See *Doe v Mills,* 212 Mich App 73, 92; 536 NW2d 824 (1995).[3]

In the present case it is abundantly clear that nothing that occurred within the workplace with respect to these plaintiffs was sufficiently outrageous to fall within the rare case comprising intentional infliction of emotional distress. Although it may have been unpleasant to be on the receiving end of the conduct alleged to have taken place by the supervisors, the conduct alleged by no means constitutes conduct which is so outrageous in character that it would go beyond all bounds of decency in a civilized society. *Mino, supra.* Indeed, they are mostly comprised of threats and indignities which do not fall within the parameters of this tort. *Id.* Accordingly, the trial court properly granted summary disposition to defendants on plaintiffs' intentional infliction of emotional distress claims.

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[3] It should be noted that our Supreme Court has yet to recognize or adopt this tort. See, e.g., *Smith v Calvalry Christian Church,* 462 Mich 679, 690; 614 NW2d 590 (2000) (Weaver, C.J., concurring).

Affirmed.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray